1949. **File No.** O.B.R.T/49

Legal **DEPARTMENT**

A **BRANCH**

Subject: Opinions Under the Bombay Revenue Tribunal Act

(P1 2/E)

File No. O.B.R.T/49

Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department Vol. No. O.B.R.T./1949.

Sr No.	Compilation No.	Subject	pages.
	O.B.R.T./1949.	Opinions under the Bombay Revenue Tribunal Act.	
1.	R.I.no.8598/10-6-49. O.No.7832/12-7-49.	Reference from the President, Bombay Revenue Tribunal regardin Appeal by M/s-Rejmal Vandlal & Co. of Bhusawal. Question (1) Whether the issue involved in the appeal is a "revenue case" within the meanin of sec.4 of the B.R.T. Act; (2) Whether from the facts of this case the imposition of cer- tain conditions affecting the t ure of the land by the Collecto under the order No.L.N.D. 73 dt. 3-11-43 was legal and with n his authority, and (3) Whether having regard to the fact that the appellant had ma an application to the Collector of permission to put up new bui ings on the land and had praye for condonation of the prior act in building certain struct without the Collectores forma permission, the Appellant shou be deemed to have acquiesced t the Collector's authority to impose the conditions in ques	

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No. Inw/178/1949. 1
Bombay, 6th June 1949.

From

K.B.Wassoodew, Esq.,
President,
Bombay Revenue Tribunal

To

The Remembrancer of Legal affairs.
Legal Department, Secretariat,
Bombay.

Sir,

I have the honour, under Regulation 14 of the Bombay Revenue Tribunal Regulations of 1939, to forward herewith intwo files the record and proceedings inthe matter of the appeal by M/S Rajmal Nandlal & Co. of Bhusawal for favour of your opinion onthe following questions on the first of which the Commissione Wouthern Division and the Non-Official Member are divided

(1) Whether the issue involved in the appeal is a "revenue case" within the meaning of section 4 of the Bombay Revenue Tribunal Act.

(2) Whether upon the facts of this case the imposition of certain conditions affecting the tenure of the land by the Collector of East Khandesh under his Order No. L.N.A. 1/73, dated 3rd November 1943, was legal and within his authority; and

(3) Whether, having regard to the fact that the appellant had made an application to the Collector for permission to put up new buildings on the land and h ad prayed for condonation of the prior act in building certain structures without the Collector's formal permission, the appellent should be deemed to have acquiesced in the Collector(s authority to impose the conditions in question.

2. The facts of this case may be briefly stated .- The land comprised of Survey No.200 of Kanderi was first permitted to be used in 1896 for a non-agricultural purpose, viz. the erection of a ginning factory. The record of that permission is not forth-coming, and inconsequence it is not known whether any conditions were, in fact, imposed at the time. There is no sanad of 1895 on the record, not any agreement entered into

S.C.

by the appellant. It may be assumed, therefore, that no conditio were imposed by the Colle tor when permitting the conversion of the land to - non-agricultural use. It may be noted that the # City Survey Sanad granted in 1918 makes no mention of any conditions.

3. The property changed hands in 1939, when the present appellant purchased the land with the structures. On or about 10th J u n e 1942 the appellant, the occupant of the premises, applied to the Collector for permission for erecting new structures on the land. In that application it was submitted that as the land was converted into a non-agricultural survey number, permission was thought unnecessary for erecting additional structures and that as that ## view was now considered erroneous, fresh permission was sought and also condonation of prior unauthorised acts. The Collector upon that application imposed certain restrictive conditions by his Order No.L.N.A.1/73, dated 3.11.43, and also a penalty clause to the - following eff ct.-

> Any breach of the conditions laid down in this order shall make the occupant thereof liable to such a fine as shall be fixed by the Collector or to remove the offending structure and/or eviction from the entire S.No."

4. For four years no objection was taken to that order. In 1947, the appellant Company applied to the Collector for cancellation of the conditions, which, it was submitted, were illegally imposed. Upon the Collector's refusal to cancel the conditions, the appellant applied to the Commissioner, who dismissed the appeal on 30th September 1948. Against that order this appeal has been presented to the Bombay Revenue Tribunal.

5. There is no direct authority of the Tribunal on the question of jurisdiction. The expression "revenue cases is not defined, although the words "Revenue of the Province" have been explained in sec tion 136 of the Government of India Act of 1935. It may be recognised that the word "revenue" is not confined to land revenue or actual tax received. It has been interpreted as affecting the potential right of Government to receive or raise revenue is involved. The question that arises ## in this case is whether the penalty clause rendering the occupant liable to the payment of fine and confiscation of his land upon a breach of the conditions could not be regarded as giving rise to a contingent and possible

claim on behalf of the Government to receive revenue or its equivalent. The Tribunal has placed a liberal construction on the expression "revenue" case. In that connection, I might draw your attention to the following cases recorded in the Selected Decisions of the Bombay Revenue Tribunal.

(C. 241 of 1940)

(1) D.S.Patel-/- Selected Decisions, Part II of 1940 dated 18th May 1940, p.27.

(2) Yamanappa Hanamappa Naikar (O.135 of 1944) - Selected Decisions of 1944, dated 8th July 1944, p.37.

(3) K.L.Naik - (O.62 of 1945) - Selected Decisions o 1945, dated 15th May 1945, p. 13

Yours faithfully,

K.B. Vassoodew

President,
Bombay Revenue Tribunal

Accompaniments :-
2 Files.

1.C.
4 Copies 11-5-

No. 7822

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 12th July 1949.

From

P.N.Lad, Esquire, I.C.S.
Remembrancer of Legal Affairs.
Bombay.

To

K.B.Wassoodew, Esquire,
President, Bombay Revenue Tribunal
Bombay

Subject.-Appeal by Messrs. Rajmal Nandlal & Co.
Of Ihunsaval.

Sir,

With reference to your letter No. Inw/173/1949 date the 6th June 1949, on the subject noted above, I have the honour to enclose herein my opinion in the matter.

The papers of the case in two files accompany.

Yours faithfully,

Sd/

Remembrancer of Legal Affairs.

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A.S. A.L.R.
R.L.A.

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Office of the R.L.A.

It appears that the land comprised of Survey No. 200 of Kandari was first permitted to be used in 1896 for a non-agricultural pap purpose, i.e.,erection of a ginning fectory, and non agricultural assessment was accordingly levied. The record of that permission is not forthcoming and consequently it is not known whether any conditions were in fact imposed of that time. There is no sanad of 1896 on record nor any agreement entered into by the occupant. The City Survey sanad granted in 1918 makes no mention of any conditions. The property changed hands in 1939 and the purchasers, Messrs. Rajmal Mandlal & Co. applied to the Collector in 1942 for permission for erecting additional structures on the land and also for condoning the erection of some buildings already done, observing that, since the land was already converted to non agriculture, ordinarily no such permission would be required. The Collector upon that application granted permission imposing certain restrictive conditions by hisorder No.L.N.D.D. 73 dated 3rd November 1943 and also a penalty clause to the effect that in the event of breach of any of the conditions, the occupant would be liable to such fine as shall be fixed by the Collector or to remove the offending structure and/or eviction from the entire survey member. Asanad inform M was also executed by the applicants. For four years thereafter no objection was taken to the order of the Collector. In 1947, they applied to the Collector for canc lling the conditionn which it was submitted were illegally imposed. Upon the Collector's refusal to cancel the condition, they applied to the Commissioner, who dismissed the appeal on 30th September 1948. Against that order an appeal has been presented to the Bombay Revenue Tribunal. On these facts the following three questions are raised by the Prosidnet of the Bombay Revenue Tribunal for the Remembrancer of Legal Affairs. consideration:

(1) Whether the issue involved in the appeal is a "revenue case" within the meaning meaning of section 4 of the Bombay Revenue Tribunal Act;

(2) Whether upon the facts of this case the imposition of certain conditions affecting the tenure of the land by the Collector under his order No.L.N.D.D. 73 dated 3.11.1943 was legal and within his authority; and

(3) Whether, having regard to the fact that the appellant had made an applictien to the Collector for permission to put up new buildings on the land and had prayed for condonation of the prior act in building certain structures without the Collector's formal permission, the appellant should be deemed to have acquiesced in the Collector's authority to impose the conditions in question.

Question (1).- The question relating to the interpretation of the expression "revenue case" was discussed at a general conference at which the Hobourable Minister for Home and Legal Department, the Advocate General, The Remembrancer of Legal Affairs, and the Deputy Secretary, Legal Department were present. In the note prepared at that conference, the expression "revenue case" was interpreted as a case in which the right of Government to receive and raise revenue is involved. In the present case it is true that in granting permission the Collector has not increased the non agricultural assessment which was originally fixed at the revision survey settlement. But the condition about fine and forfeiture imposed by the Collector would involve the possibility of raising or receiving revenue by Government for, in the event of the breach of any of the conditions, Government would be entitled to levy fine and also to forfeit the land, which forfeiture might ~~shm~~ enable Government to add to its revenue by sale of the land. Consequently, there would be no legal objection to treating the present case as a revenue case.

Question 2....

Question (1).- Admittedly the land was converted to non-agriculture in 1896. When the land is already converted to non agriculture, the provisions of section 65 of the land Revenue Code would not be attracted, Section 67, which empowers the Collector to impose conditions, would be available only when permission under section 65 is to be granted. Since no such fresh permission was heeded in the present case, section 67 could not be resorted to by the Collector. Consequently, the imposition of conditions by theCollector under section 67 of the Land Revenue Code was invalid.

Question (2).- It is true that the appellants themselves sought the permission of the Collector to allow the erection of additional building and also to condone the erection of buildings which was done before that time. It is also true that they took no objection to the Collector's order for nearly four years and also executed a sanad in Form M. It is clear from the facts of this case that the appelants applied to the Collector for permission under a bona dide mistake as to their rights. Ignorance of a private right is on a par with ignorance of fact and therefore would be execusable in law. Cooper v. Phibba (1867 2 H.L. 149). If it be said that the sanad in M Form creates a contract between the parties it can be treated as void under section 25 of the Indian Contract Act for want of consideration. In the circumstances, the order of the Collector imposing the conditions may be set aside.

SD/ 11-7.

Remembrancer of Legal Affairs.

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